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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,655	08/31/2006	Kenneth Martin Taylor	110199.404USPC	5100
500 7590 01/20/2010 SEED INTELLECTUAL PROPERTY LAW GROUP PLLC 701 FIFTH AVE SUITE 5400 SEATTLE, WA 98104				
EXAMINER NWAONICHA, CHUKWUMA O				
ART UNIT		PAPER NUMBER		
1621				
MAIL DATE		DELIVERY MODE		
01/20/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/568,655

Applicant(s)

TAYLOR ET AL.

Examiner

CHUKWUMA O. NWAONICHA

Art Unit

1621

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2009 and 04 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 120-193 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 186-191 is/are allowed.
- 6) ☒ Claim(s) 120-185, 192 and 193 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Current Status

1. This action is responsive to Applicants' Remarks of 12 October 2009 and 4 December 2009.
2. Receipt and entry of Applicants' Remarks is acknowledged.
3. Claims 120-193 are pending.
4. The finality of the previous Office Action dated 04/15/2009 is withdrawn in favor of the current rejection.
5. The 112 rejections, second paragraph and first paragraph are withdrawn following Applicants amendments.
6. The 103 and 102 rejections are withdrawn following Applicants amendments.
7. The finality of the Office Action dated 04/15/2009 is withdrawn in favor of this Office Action
8. The nonstatutory obviousness-type double rejection of claims 120-185, 192 and 193 as being unpatentable over claims 1-10 of U.S. 7,232,809 is withdrawn because claims 1-10 of U.S. 7,232,809 claimed a different invention.
9. The nonstatutory obviousness-type double rejection of claims 120-185 and 192 as being unpatentable over claims 120, 122-128 and 130-133 of copending Application No. 11/355,518 in view of Taylor et al. and claims 88-112 of copending Application No. 10/568,654 is maintained for the reasons stated in the previous Office Action.

Applicants' argument and amendments have been fully considered but they are not persuasive because Applicants claimed disclose a chemically stable antioxidant compound, its pharmaceutical composition, a method of reducing oxidative stress in a cell with a chemically stable antioxidant compound are obvious in view of the prior art references cited. Specifically, Applicants claim a compound wherein the anion is selected from the group consisting of an alkyl sulfonate, an aryl sulfonate, tetrafluoroborate, trifluoromethanesulfonate, hexafluoroantimonate, hexafluoroarsenate, hexafluorophosphate, tetraphenylborate, and tetra(perfluorophenyl)borate while Murphy et al. claim a compound wherein the variable Z is an anion or a salt forming anion that does not include a halogen ion or a nitrate anion. The difference does not constitute a patentable distinction **absent** a showing of criticality.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 120-185, 192 and 193 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 120-185, 192 and 193 are indefinite because it is not clear how these variables (linking moiety, antioxidant moiety, vitamin E, a chain breaking antioxidant, a fullerene and a spin trap) are attached to the general structure of the antioxidant compound. Clarification and correction are required.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claim 134 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 134 of Application No. 11/355,518. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Allowed Claims

Claims 186-191 are allowable over the prior art of record.

Reason For Allowance

The following is an examiner's statement of reasons for allowance: A search of the prior art failed to uncover any reference that anticipates or renders obvious a method of synthesis of a compound having the formula III or its quinol form; wherein all the variables are as defined in the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chukwuma O. Nwaonicha whose telephone number is 571-272-2908. The examiner can normally be reached on Monday thru Friday, 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Sullivan can be reached on 571-272-0779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Chukwuma O. Nwaonicha/
Examiner, Art Unit 1621

/Jafar Parsa/
Primary Examiner, Art Unit 1621